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A SUBMISSION BY THE

ONTARIO DIVISION

THE CANADIAN MANUFACTURERS' ASSOCIATION

TO

THE HONOURABLE MR. JUSTICE GEORGE A. MCGILLIVRAY

COMMISSIONER

THE ROYAL COMMISSION ON THE WORKMEN'S COMPENSATION ACT

AUGUST 16, 1966.



The Canadian Manufacturers' Association

67 YONGE STREET, TORONTO 1, ONTARIO

August 16, 1966.

The Honourable Mr. Justice George A. McGillivray,
Commissioner,
The Royal Commission on the Workmen's Compensation Act,
Box 202, Parliament Buildings,
Toronto 2, Ontario.

Sir:

The Ontario Division of The Canadian Manufacturers' Association appreciates this opportunity to submit its views regarding The Workmen's Compensation Act of Ontario.

The Association further appreciates the indulgence of the Commissioner in allowing it to present this initial submission, which will be followed by additional representations.

The Association and its Objectives

1. The Canadian Manufacturers' Association is a nation-wide, non-profit, non-political organization designed to provide specialist services to all its members and to seek the solution of common industrial problems. It was founded 95 years ago and includes manufacturers in every line of manufacturing enterprise in Canada. Over 75% of the Association's member firms employ less than 100 people and of this percentage, the great majority employ less than 50 wage earners. The men and women on the payroll of the member companies produce more than three-quarters of the goods manufactured in Canada. The Ontario Division of the Association, on behalf of whose members this submission is made, includes in its membership, over 3,200 manufacturers.





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2. The purpose of The Canadian Manufacturers' Association is to spur the development of Canadian industry and thereby advance the well-being of each and every Canadian.

The Association's interest in Workmen's Compensation

3. As employers, the members of this Association are genuinely interested in an orderly means whereby workmen or women who are injured accidentally in the pursuit of their daily tasks are properly treated and compensated for loss of earnings. They also have a legitimate concern for the content and administration of the Act for the compelling reason that the total cost of workmen's compensation, which includes administration expense, the payment of compensation to injured employees, pensions to widows and dependants, all medical hospital, rehabilitation and accident prevention expense is borne solely by employers.

4. In the year 1965 Ontario employers, including manufacturers, covered by Schedule I of the Act paid a total of \$93,162,963. to the Workmen's Compensation Board. This is of particular significance because of the tendency of legislators, organized labour and the public at large to mistakenly identify The Workmen's Compensation Act as another form of social legislation such as Unemployment Insurance in which employers, employees and the government participate. We respectfully suggest that it is of the utmost importance to recognize this clear difference between Workmen's Compensation and other forms of labour and social legislation.

The Purpose of the Act

5. It must be recalled that before the present legislation was enacted, an employer was not liable unless negligence on his part was established by the courts. The Act was introduced to provide prompt compensation for workers where injury arose out of, and in the course of, their employment and to avoid the necessity of an injured employee having to resort to litigation with all its attendant delay and cost.

The legislation passed in 1914, which represented a revolutionary change, had the Association's support. It is submitted, however, that the present system cannot function properly unless certain basic principles are observed.

6. One of the most basic principles is the purpose of the Act. We submit that this was well defined by The Honourable Mr. Justice W. D. Roach in his Report on The Workmen's Compensation Act in 1950, from which we quote:

"This act should be considered for what it is and was originally intended to be, namely, a scheme by which compensation is provided in respect of injuries to workers in industry. It is not a system for dispensing charity. It is not unemployment insurance. It is not social legislation for the purpose of elevating the standard of one group in society at the expense of another.

"I will have occasion to point out later that certain amendments which have been introduced into the Act since it was originally passed are really in the nature of social legislation and a departure from the original scheme and purpose of the Act. The effect of those amendments has been to impose upon industry burdens which should be borne by society generally.

"If the true purposes and objectives of the Act are adhered to, justice will be done as between industry and labour. If, on the other hand, those purposes are lost sight of, or this Act from time to time be regarded as a convenient place into which to put legislation which in substance is social and not compensatory, it may become very much distorted. In the result, labour will continue to be relieved from unjust burdens from which it suffered too long under the common law but an injustice will be done to industry by placing on its shoulders burdens which should be borne by society generally."

7. The Association believes that these observations provide an excellent summary of what the Act is. Even more significantly they sum up clearly what the Act is not. We submit that it is of paramount importance that this purpose of the Act, as defined by Mr. Justice Roach, be adhered to.

8. Nevertheless the Association wishes to emphasize that it endorses advances in social legislation which meet the needs of the citizens of

Canada, provided that the cost of such advances can be borne by all Canadian society at large without stifling the individual and group initiative which is so essential for the country's continued development.

Composition of the Workmen's Compensation Board

9. While there is no specific mention in the Act as to Board members being representatives of employers, employees or the public, it is generally recognized that employees have direct representation in the person of the Vice-Chairman. Indeed such labour representation has been identified by the Minister of Labour in the Legislature.

10. When the present Chairman was appointed the CMA noted that Mr. Legge did not have a background as an employer as had his predecessor, Mr. Sparrow. However, it recognized the need for a Chairman who is impartial and commends the Government for recognizing this important attribute. It did not, therefore, protest the absence of employer representation on the Board.

11. Should it be that employers can be assured that in future all members of the Board will be composed of able and impartial administrators of employers' funds, held in trust for the purpose of compensating injured workmen, this Association would support such action.

12. On the other hand if, when new appointments are made, one member of the Board is clearly identified as representing labour surely employers who pay all the costs of compensation are entitled to equal representation.

The Act and Social Change

13. As the conditions of society change during the passage of years they create new situations for which adjustment is necessary. Certainly the hours of work are now fewer than they were and the five-day week in manufacturing is the rule rather than the exception. With this has come more leisure time. Many persons use this leisure to engage in satisfying physical activities of great variety such as gardening, building patios,

summer cottages, boats and docks. In order that the true purpose of The Workmen's Compensation Act may be maintained it is essential that care be taken to ensure that disabilities arising out of and in the course of leisure time activities are not confused with industrial disabilities. There are two areas where, the Association submits, the Act is wrong in not recognizing such conditions or because changes were made for social rather than sound compensation reasons.

Waiting Period

14. One of these is the waiting period. Such periods are a regular feature not only of Workmen's Compensation but in unemployment and sickness insurance schemes. The main reason for the waiting period in Workmen's Compensation is that if compensation were paid in every case from the date of the disability, minor injuries could be made the excuse for unwarranted absence at the expense of the accident fund. Another reason is that, without the waiting period, the work of the Board in administering compensation would be greatly increased by a large number of minor claims. The cost of handling these would be out of all proportion to the benefits paid.

15. It is the Association's view that the purpose of the Act would be more properly served if the waiting time were defined as 'working days' rather than 'calendar days'. An inequity now exists whereby an employee can be disabled for a Thursday and Friday, return to work on Monday and be entitled to compensation, whereas an employee injured on a Tuesday, disabled on Tuesday and Wednesday can return to work on Thursday and not be entitled to compensation.

Definition of Accident

16. Another adjustment which is essential concerns the definition of an accident in order to establish a clearer connection between a disability and the work being done. Undoubtedly the majority of claims are clear-cut in that an unusual incident occurred out of and in the course of employment. Compensation is payable and the employer's concern in this case is twofold: firstly that the employee receives equitable and proper treatment and secondly that the cause of the accident be corrected.

17. There are, however, many cases where employers are concerned over the determination of whether or not the claim is one for which there is a liability. These fall into two categories:

(a) Knowledge that a claim is being made

is not available until after the

employee has left his place of work.

Sometimes there is considerable delay

in filing a claim.

When a late claim is filed by an employee surely it increases the possibility that the condition may not have been occasioned out of and in the course of employment. To accept the claim and commence payment, relying on the employer to appeal if he feels justice has not been served, casts that employer in an unfortunate position in the sensitive area of employee relations. Surely such cases call for a different handling process from those in which the claim is made promptly and it is crystal clear the disability arose out of and in the course of employment. It is suggested that the onus to establish that it is an industrial disability should swing more to the employee for each day delay in filing a claim and less on the employer to establish that the disability was non-industrial.

- (b) It is a condition in which it is difficult to determine a 'causal relationship' between the reported disability and the work situation.

Likewise in cases of 'causal relationship' normal processing leaves much to be desired. The deliniation between a normal physical failure and a disability caused by the work situation does not lend itself to quick and easy adjudication.

18. The Association suggests that both situations described in (a) and (b) above require new handling methods.

Increased Benefits in Respect of Past Injuries

19. It is difficult to argue against the action of the Legislature which, on several occasions, has amended the Act to increase benefits and to make the increases applicable to past accidents. Indeed the Association has not opposed such changes. It is, however, critical that the additional funds required for the increases in respect of past accidents have been collected from employers. The Association submits that this method of financing improvements in past awards is contrary to a basic principle of the Act as established by Chief Justice Meredith and as set out in the present Section 84.

"It is the duty of the Board at all times to maintain the accident fund so that with the reserves, exclusive of the special reserve, it will be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments that are to be made in those years in respect of accidents that have happened previously."

20. This basic principle provides that the money needed to compensate for accidents in any year should be paid for by those employers who are in business in that year. It recognizes that few employers stay in business

indefinitely, that some cease operations and that new employers come under the Act. It is respectfully submitted that to require employers of today and future years to contribute the funds required to pay increased pensions in respect of accidents which occurred in the distant past is contrary to one of the basic financial criteria on which the Act rests. This contention was also advanced by Mr. Justice Roach in his 1950 Report.

21. The Association submits that such increases are in effect a cost of living adjustment. They are required by changed conditions which affect all parts of society and, therefore, should be the responsibility of the community at large by means of a charge against public funds.

Scale of Compensation

22. The Association recognizes that the maintenance of an appropriate relationship between the scale of compensation paid to a workman when incapacitated by injury, and his income when he is at work, is one of importance. The rate of compensation now in effect in Ontario and in fact in each province, is 75% of average earnings. It is respectfully submitted that this percentage should be the upper limit and should not be exceeded.

23. Taking into account the fact that the workman, while receiving 75% of his average earnings, is not called upon to pay income tax, unemployment insurance deductions, cost of travel to and from his place of employment, and all other day-to-day expenses related to his normal employment, it is clear that the amount of money the worker has to live on, under compensation, can closely approximate his take-home pay when working. Any increase in this percentage can produce a situation whereby the workman is better off financially on compensation than when working.

24. Rather than increase the percentage basis for compensation, the

Association believes that more emphasis should be placed on devising means to enable the workman to return to employment at full wages.

Temporary Partial Disability

25. The effect of Section 41 of the Act is that where an injured workman progresses from a condition of temporary total disability to one of temporary partial disability he must be prepared to accept some lighter work and draw reduced compensation. This is an equitable arrangement but difficulties arise where no suitable light work is available with either the pre-accident employer or any other employer.

26. This is an area where those who mistakenly regard Workmen's Compensation as an integral part of growing social welfare legislation press for further coverage by the Act to the extent of providing full compensation until full employment is found. The Association submits that such action would alter the status of the Act from one of compensation to that of another welfare statute. It strongly opposes such a change but recognizes there is no simple answer to the problem. The availability of work, light or otherwise, for a particular individual is subject to many factors and often is not related to the fact that the workman had an accident.

27. The Association suggests that this important and controversial aspect of compensation deserves the most careful study. While at present it has no detailed recommendations to make, it suggests that a reasonably clear dividing line must be drawn in such cases between those which are proper claims on Workmen's Compensation and those which more properly should be dealt with through Unemployment Insurance. Possibly an answer lies in rehabilitation through the use of the existing federal-provincial facilities for training and re-training.

Merit Rating

28. The Board has a system of Merit Rating, as authorized by Section 86 (6). This provides a 25% departure from full collective liability with reduction in assessment for those employers with good accident experience and a corresponding increase for employers with poorer than average accident cost experience. This was intended as a means of providing an additional inducement to employers to prevent accidents and has been applied in a limited number of rate groups.

29. It is felt that having adopted the plan on an experimental basis several years ago, the Board should promote the use of Merit Rating in more groups to reduce the load on employers with low accident experience and to encourage other employers to reduce accidents. It is also felt that Merit Rating would be more widely accepted if certain costs, such as those for pensions for such disabilities as pneumoconiosis which are delayed until the employee leaves his employment, were omitted from current experience calculations. That some employers warrant the benefit of Merit Rating is demonstrated by the fact that even under this scheme some employers pay to the Board several times as much as their employees draw in benefits.

Accident Prevention

30. Section 117 (1) of the Act allows for the formation of accident prevention associations and a recent amendment provides the Board with a measure of control over the activities of such associations. It is respectfully submitted that the voluntary nature of these associations is one of their greatest strengths and it is recommended that no additional legislative restrictions be placed on their operation. Since employers have the responsibility for safety they should have the primary voice in

the activities of the accident prevention associations whose efforts have produced effective results and for whose activities they provide the funds.

Annual Report of the Board

31. The Annual Report of the Board does not give sufficient information on the reserves and investments of the Board's funds and it is recommended that this information be enlarged upon in future editions.

Investment of Board Funds

32. It is submitted that Section 107 should be broadened to permit investment in those securities which are normally acceptable for trust fund investments.

Pensions and Retirement

33. The Association recommends that an exhaustive study be made of the status of pensions under Workmen's Compensation when workers reach retirement age. With the introduction of the Canada Pension Plan and its related social security schemes it has now become important to examine the relationship between such payments. Such a field of study might anticipate a decision in approximately five years' time.

Procedure when amendments to the Act are contemplated

34. Without belabouring the cardinal fact that employers provide all the funds for Workmen's Compensation, it is respectfully submitted that for this reason, as well as by reason of their direct interest in employee safety, employers should be given the opportunity to examine and comment upon any contemplated amendments to the Act or changes in the Regulations, and that this opportunity be given while such proposed amendments or changes are in draft form and prior to their submission to the Legislature or implementation as Regulations. This practice has from time to time been used in connection with other statutes, with consequent benefit to the

administrators, to employees and to the employers affected by the provisions of the legislation in question.

35. The Ontario Division of The Canadian Manufacturers' Association values this opportunity to present its views to the Commission and would be only too pleased to supply any further information or elaboration which may be required.

All of which is respectfully submitted.

R. J. Woxman,
Chairman,
Ontario Division.

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IN THE MATTER OF the Public Inquiries
Act, R.S.O. 1960, Chapter 323;

AND IN THE MATTER OF an Inquiry into
the Workmen's Compensation Act, R.S.O.
1960, Chapter 437.

SUBMISSIONS AND RECOMMENDATIONS BY THE
LABOURERS' INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL 183 TO THE HONOURABLE MR.
JUSTICE MCGILLIVRAY, COMMISSION OF THE ROYAL
COMMISSION ON THE WORKMEN'S COMPENSATION ACT

September 9th, 1966.

IN THE MATTER OF the Public
Inquiries Act, R.S.O. 1960,
Chapter 323;

AND IN THE MATTER OF an Inquiry
into the Workmen's Compensation
Act, R.S.O. 1960, Chapter 437.

Submissions and recommendations by the Labourers'
International Union of North America, Local 183,
to the Honourable Mr. Justice McGillivray, Com-
missioner of the Royal Commission on the Workmen's
Compensation Act.

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INTRODUCTION

The Labourers' International Union of North America, Local 183, appreciates the opportunity of presenting to the Commissioner its submissions and recommendations in connection with the Workmen's Compensation Act of Ontario.

Our Local was established in Toronto during October, 1952, and at present represents approximately 3,000 workers in Ontario. The work jurisdiction of our Local embraces, for the most part, heavy construction work which includes work on bridges, subways, tunnels, roads, sewers and water mains. Because of the many extraordinary hazards facing our members in this type of work and the relatively high accident rate which almost inevitably must follow, we have always been very concerned with Workmen's Compensation. Often our unique position of accident exposure has enabled us to perceive with a particular clarity some of the hard realities facing the unfortunate victim of industrial accidents in Ontario.

Perhaps even more significant, however, is the fact that we are extremely conscious of the importance of accident prevention. We are firmly convinced that accident compensation and accident prevention are inseparable fields of inquiry and that safety must be one of the most essential underlying considerations in an inquiry of this type.

We take pride in being one of the few unions, if any, to establish a Safety Department within a Local in Canada. Our Department was established shortly after the inception of our Local, and has been a powerful force in the heavy construction industry, especially since the Hogg's Hollow disaster of March, 1960, in which a number of our men met a tragic death. The functions of this Department have been to investigate various construction projects to ensure that maximum safety conditions are provided and enforced, and to make various submissions and recommendations to Provincial and Municipal levels of Government in the interests of safety and accident prevention.

It is with a sense of great concern that we humbly submit our submissions and recommendations to this Commission. The scope of this Brief has not permitted the fullest and most extensive elucidation that we might have wished. However, we would welcome an opportunity to present several witnesses at such time as the Commission shall deem feasible. It is our belief that their testimony would be extremely helpful in future deliberations of the Commission.

In the fields of transportation and manufacturing, this Province is forging ahead at an unprecedented pace, with the result that a greatly increased number of persons are being exposed to industrial accidents of all types. We welcome the

opportunity to participate in this inquiry, and are hopeful that our contribution will be of assistance in carrying out the difficult task ahead.

A. INDUSTRIAL DISEASES

(1) Caisson Disease

Section 116(8) and Schedule 3 of the Workmen's Compensation Act provide for compensation for certain industrial diseases contracted by a workman due to the nature of his employment. Once a particular disease in Schedule 3 is contracted by a workman, engaged in any process mentioned in the second column of the Schedule, there is a rebuttable presumption as to the particular disease being due to the nature of employment. Unfortunately, some serious industrial diseases are very difficult to immediately indentify and diagnose, and often other diseases and disabilities are suffered through the unknown causal effect of the more serious, but latent disease. Further, once the more serious disease is diagnosed, it is still difficult to determine the degree of permanent disability and the extent of necessary compensation.

In the past, many members of Local 183 of the Labourers' Union have suffered severely from the effects of Caisson disease as a result of work carried on in compressed air. Although this disease is compensable by virtue of its inclusion in Schedule 3, it is very difficult to detect the disease and many men have not realized that they have contracted it or have not been able to attribute resulting diseases or disabilities to its initial causal effect for purposes of compensation.

The disease is contracted by men working on tunnel construction sites, where compressed air is required to shore up water and sand in underground excavations. The regulation under the Department of Labour Act permits up to fifty pounds pressure, and workmen in the Toronto area have been known to have worked in pressurized tunnels up to forty-eight pounds. This extreme pressure on the human body causes tiny bubbles to form under the skin which in turn, affect joints, blood vessels, balance, and often lead to a general deterioration of the body. However, these general symptoms of the disease do not often come to light for several months or even years after the disease has been contracted.

The present practice of most employers using compressed air, under provisions 106 - 112 of the Regulation made under the Department of Labour Act, is to give each man a very brief medical examination before sending him into the tunnel, and to make out a minimal medical report under provision 111. In many instances, these examinations are very superficial, with as many as twenty men being examined by one doctor in the space of half an hour. In a few instances, the examinations are sometimes delayed until after the men have started working in the tunnel. In practically all cases, the medical information obtained from the cursory examination of each man is insufficient to determine whether he is medically fit to work

in compressed air. Even more important, the present form of examination is insufficient to provide the Workmen's Compensation Board with adequate evidence to establish any sort of causal relationship between work in compressed air and the numerous diseases and disabilities suffered as a result of Caisson disease.

There are several known cases in Ontario of serious permanent disability from Caisson disease where no compensation was awarded by the Board. In one case in particular, a man who had worked in compressed air of forty-two and a half pounds pressure died several months later of general heart deterioration, and received no compensation because of the lack of evidence showing the causal relationship, and because the initial examination failed to disclose whether there was any pre-existing heart condition. It is therefore submitted, that due to the latent and unknown effects of Caisson disease, each man, before being sent into compressed air, should receive a complete and thorough examination of every part of his body, and that detailed records of this examination be retained for use by the Board in any subsequent claims for compensation. Further, it is submitted that each man working in compressed air should be medically examined in similar fashion every two weeks during or subsequent to such work, and that these records also be retained.

Jorge

Valuable research on Caisson disease is presently being conducted by Dr. Gamarra under the sponsorship of The Workmen's Compensation Board. This study was partially sponsored in its formative stages by Local 183 of the Labourers' Union, approximately one year ago. Dr. Gamarra's report will be completed in the very near future, hopefully this month, and we would recommend that it be carefully considered by this Commission as an authoritative and enlightening document on this relatively unknown disease, in light of our recommendations as to improved and more detailed medical examination of men working in compressed air.

In conjunction with Caisson disease, we might briefly mention the matter of decompression chambers, also known as "Medical Locks". Men working in compressed air, upon emergence from the underground excavation, should have a decompression chamber available for their use, or they might suffer what is known as "the bends". Although the regulation under the Department of Labour Act requires them, these chambers are not always available, and in some cases where they have been available, have not been hooked up for immediate use. Often employers and public officials, such as police or firemen, have demonstrated a total ignorance of the need for or use of decompression chambers. For example, on one occasion, a workman suffering from "the bends" in a public place was treated as a

common drunk, and placed in jail rather than taken immediately to such a chamber.

In this regard, we would make two recommendations:

(i) That the Workmen's Compensation Board make available to all employers using compressed air and to all public officials such as police and firemen, information concerning the general diagnosis and treatment of "the bends" and concerning the use of decompression chambers.

(ii) That the inspection system for decompression chambers be revised to ensure absolute compliance with the regulation under the Department of Labour Act.

(2) Other Diseases

It is our submission that ARTHRITIS and RHEUMATISM be recognized by the Board as industrial diseases and included in Schedule 3, for every workman engaged in any process involving continued exposure to wetness, drafts, cold weather, wide variations in temperature, and repetitive stress.

Further, it is submitted that Schedule 3 should be periodically updated to add new industrial diseases as compensable disablements, as such diseases become known and recognized in industry. We would specifically recommend the abolition of the residence restriction in Section 116(8) of the Act, as this restriction inflicts undue hardship on those workers from

outside the Province and thus tends to impose restraints on the general mobility of the labour force.

B. DISABILITY COMPENSATION

(1) Short-Term Disabilities

Section 3(1)(a) of the Workmen's Compensation Act denies compensation to injured employees disabled from earning full wages for a period of less than three calendar days. Although the noncompensable disabilities under this Section are admittedly minor in terms of long-term financial hardship and deprivation, they are still a great source of anxiety, discomfort and annoyance. Under the principle of workmen's compensation legislation, we see no reason why a workman injured through no fault of his own in the course of employment, should not be compensated for his injury, whether he be disabled from earning full wages for one day or for one year or for ten years. A claim for short-term disability is not necessarily a nuisance claim, and we would submit that the costs saved by this short-term exemption do not begin to justify such a diversion from the true principle of compensation.

Further, this short-term exemption has necessitated the withholding of compensation payments for the duration of the three calendar day period, at which time the disability

then becomes compensable, computed and payable from the date of the disability. This so-called "waiting period" of three days only serves as an additional "anxiety factor" in all cases.

Therefore, it is submitted that Section 3(1)(a) should be entirely eliminated from the Act, and injuries should be compensable regardless of the time that a workman is disabled from earning full wages.

(2) Computation of Payments

Under the Act, temporary or permanent disability is generally compensated by a weekly payment of 75 per cent of the workman's average weekly earnings, not to exceed the rate of \$6,000.00 per annum, so long as the disability lasts. Again, these provisions constitute a diversion from the true principle of compensation whereby a workman should receive 100 per cent of his average weekly earnings with no maximum, when injured through no fault of his own in the course of his employment. Therefore, we would recommend that Sections 40, 40a, 41, 42 and 44 be amended to conform with the compensation principle, and that an injured workman compensable under the terms of the Act receive such compensation as would equal his take-home pay had he not been injured.

Also, we would submit that the minimum amounts of

compensation set out in Section 43 of the Act are totally unrealistic in light of today's rapidly rising price index. Rather than fixing these minimum amounts for temporary or permanent disability as set dollar figures, which can easily become outdated in a short period of time, we would suggest that the minimum amount be pegged so as to automatically conform with the existing legal minimum wage rate for each class of workman in the Province. In other words, an increase in the legal minimum wage rate should result in a corresponding and identical increase in the minimum compensation amount under Section 43. In cases of partial disability, of course, there would be a minimum consisting of a portion of the minimum wage rate in proportion to the impairment of earning capacity.

(3) Light Duty Categorization

Local 183 of the Labourers' Union represents workmen engaged primarily in heavy construction. Section 41 of the Act provides for the reduction of a partially disabled workman's compensation payments in proportion to the average amount that he is earning or is physically capable of earning, as determined by the Board. The present practice of the Board, upon a doctor finding that a totally disabled workman is improving and able to do some light work, is to reduce the workman's benefit by 50 per cent or in some cases by a greater amount. The sole criterion in these various determinations by the

Board would appear to be whether the workman is physically capable of earning a particular amount of money engaged in some form of "light duty". Little consideration, if any, is given to the question of whether light duty is, in fact, available. This works a particular hardship on members of our union since there is virtually no "light duty" in the heavy construction industry.

Thus, many of our men in the past have found themselves with their compensation payments cut in half, yet still unable to obtain any light duty employment. The accepted procedure for worker in this predicament is to apply for Unemployment Insurance benefits. Often, these benefits are of an amount insufficient to offset the decrease in compensation. In one situation in particular, a member of our union was given a "light duty" designation by his compensation doctor, yet denied any benefits by the Unemployment Insurance administrators because, in their opinion, he was medically unfit for any work. In situations where a workman is ineligible for Unemployment Insurance benefits, he must turn to the City Welfare Department who demand that he assign his Workmen's Compensation benefits to them in exchange for welfare payments; for some strange reason the Welfare Department is often able to draw greater benefits from the Board than the workman himself. We would beg the Commission's indulgence to hear at least one

of our workman who has suffered extreme financial and physical hardship under this provision of the Act.

We agree with the policy of Section 41 in attempting to force physically improved workmen back to work for rehabilitary purposes and to eliminate abuses by tardy workmen. However, we see absolutely no justification in decreasing benefits with a "light duty" designation, when in fact no light duty is available. Therefore, we would submit that, unless an injured workman already has secured light duty employment, or the Board is willing to find him such employment or to arrange for his retraining for other employment, he should receive full benefits for total disability until such time as he is able to return to his original employment. Accordingly, we would recommend the amendment of Section 41 to conform with the above.

(4) Pre-Existing Injuries

The present policy and practice of the Board with regard to compensating injuries aggravated by pre-existing conditions is somewhat unclear. However, in many cases the Board has attempted to separate the injury from the aggravation, so to speak, and to award only partial compensation. We would submit that this practice is contrary to that of the Ontario Courts in negligence cases coming within their

jurisdiction, and is not authorized by Section 3 of the Workmen's Compensation Act. In this regard, we would endorse the detailed submission of the International Union of Mine, Mill and Smelter Workers, and respectfully urge that the suggested addition to the Act by Mr. Justice Roach (as he then was) on page 3 of their submission, be adopted immediately.

(5) Job Security

Unfortunately, there are many employers particularly in the heavy construction industry who make no effort to provide an injured workman with continued employment upon his return to good health. We realize, of course, that in the construction industry, an employer's situation is constantly changing; projects are completed and new ones can arise in different areas and thus it can become impossible to retain the injured workman's job for any great period of time. However, in many cases an employer's situation does not change, particularly during the course of a short-term injury suffered by a workman. Termination while on compensation not only imposes hardships in terms of difficulties in obtaining a new job, but it also can involve financial hardships in terms of lost pension, medical; hospital and insurance benefits formerly paid by the terminating employer.

Accordingly, it is our submission that no workman should be discharged from his employment by the sole reason

of his being on compensation. The employee should be reemployed upon his return to good health provided that he is physically able to resume work similar to that prior to the injury. If the employer is able to prove to the satisfaction of the Board that such work is no longer being carried out in his day-to-day operations, then he of course would be under no obligation to retain or reinstate.

C. FATAL ACCIDENT COMPENSATION

(1) Burial Expense

Upon consulting several funeral homes in Metropolitan Toronto, we have been led to believe that the present average rate for each single funeral is \$750.00 exclusive of cemetery plot and services. Section 37 (1)(a) of The Workmen's Compensation Act allows a maximum of only \$300.00 for burial expense. For these most tragic of all accidents, we would recommend that the maximum burial expense be increased to \$750.00 plus \$150.00 for the cemetery plot, headstone and auxiliary services.

(2) Lump Sum Payment

Section 37 (5) of the Act provides for a lump sum payment of \$300.00 to be paid to the widow of the deceased workman. In virtually all cases, this sum is insufficient compensation for the unexpected death of the family breadwinner since immediate financial outlays, such as the obtaining of legal advice, home maintenance, transportation, moving expense, etc., often

absorb a sum equal to three times the lump sum payment in the space of a few short weeks. Therefore, we would recommend that this lump sum payment be increased to \$1,000.00.

(3) Computation of Survivor Benefits

The dependants of a deceased workman killed in the course of his employment through no fault of his own should be entitled to such compensation as will enable them to continue to live in the manner in which they were accustomed at the time of the death by virtue of the deceased's wages. Naturally, some workmen are capable of earning higher wages than others, yet Section 37 of the Act completely ignores any differences in earning abilities, and provides only for standard monthly payments of unrealistic amounts to the widows, children and other dependants.

We submit that the dependants should be collectively entitled to 100% of the deceased workman's average monthly earnings at the time of his death, monthly payments to be allocated among the widow, children, or other dependants in such portions as the Board shall determine, to terminate according to the terms of present Section 37 (2), 37 (6), 38 and 39. In cases where the average monthly earnings of the workman at the time of his death were lower than the legal minimum wage rate for that particular class of industry (based on 160 hours per month) the monthly payments to be allocated should equal the legal minimum wage rate.

Should it be impossible to compute the survivor benefits as above and remain absolutely necessary to retain the present form of computation based on monthly lump sum payments to particular dependants, we would then recommend that Section 37 (3) (b) and 37 (3) (c) be amended by deleting the clause "not exceeding in the whole \$150.00", so as to eliminate discrimination against large families of deceased workmen.

D. PRACTICES AND PROCEDURES OF THE BOARD

(1) Accident Reports.

In many instances, the most substantial piece of evidence before the Board in a compensation case is an accident report filled out by the employer. It has been the experience of some of the members of our Union that these reports are often biased in favour of the employer; significant factors, such as the condition of the equipment or the workman's previous medical history, are often omitted or overlooked. Further, these reports, invariably written in English, are often handed for signing to an injured workman whose language is other than English, and thus he unknowingly approves a report which does not always give a true picture of the actual accident. In more extreme situations, employers have been known not to complete a report at all, and have induced injured workmen from reporting lost time accidents themselves by giving them light duty work, until it is too late for them to establish their entitlement

under the provisions of the Act.

We would respectfully urge the Board to carefully scrutinize the conditions under which all accident reports are filed by employers and to particularly ensure that an injured workman fully comprehends any employer's report which he might have signed. Also, we would strongly recommend that no workman be precluded under Section 21 (1) of the Act from the right to compensation by reason of being wrongfully induced by the employer not to report an otherwise compensable accident.

(2) Investigations By The Board

We would be foolish indeed to suggest that in the efficient administration of the Act, no investigations were necessary to prevent abuses by injured workmen receiving compensation for partial or total disability. Human nature being what it is, there will always be those few workmen who will attempt to "beat the system" and secretly take other employment without a proportional adjustment in their compensation payment. However, in some instances the evidence collected by the investigating representatives and relied on by the Board has been, in our opinion, of questionable validity. For example, in the case of one of our injured members receiving compensation, an investigating representative took the statement of the man's retarded child at his place of residence to the effect that "daddy was at work" as evidence that the injured workman was secretly employed while receiving full compensation.

With great deference, we would suggest that the Board discourage any questionable practices of their investigating representatives and carefully consider all evidence placed before them as to its validity.

(3) Appeals

(a) Advisory Letters In Two Languages.

Section 72 of the Act prohibits a review of any Board action or decision by any Court. However, under the authority of Section 72 (3) of the Act, the Board is empowered to reconsider, rescind, alter or amend its own decisions, and to this extent, it has set up an internal appeal procedure whereby an injured workman may appeal to an Appeal Tribunal for reconsideration of his claim.

The usual practice of the Board, following the rejection of a claim by the Review Committee, is to send a letter to the injured workman advising him of the rejection and informing him of his right to appeal to the Appeal Tribunal. However, many of the men receiving these letters speak and read a language other than English, so are unable to fully comprehend the valuable right to appeal being afforded to them. Therefore, in cases of injured workmen known to the Board to be unable to read English, we would urge that two copies of such letters be sent, one in English and one translated into the native language of the particular workman receiving it.

(b) Right to Counsel

It is further recommended that these letters advise each workman of his common law right to retain counsel for presentation of his case before the Appeal Tribunal.

(c) Evidence

The usual practice of the Board when informing an injured workman that his claim has been rejected is to state the following:

"It is the opinion of the Review Committee that the evidence on file fails to establish personal injury by accident arising out of and in the course of the employment, and accordingly rejects your claim".

After the Review Committee has rejected his claim, a workman who wishes to appeal is able to obtain upon request a summary of information upon which the Review Committee has based its decision. However, in virtually all cases, this summary is insufficient for the proper preparation and presentation of an appeal, and the claimant is forced to proceed before the Appeal Tribunal in a position of distinct disadvantage, or to abandon his appeal completely. We submit that this practice of shielding evidence is contrary to the rules of natural justice, and should be abolished immediately.

(d) Subpoenas

On a number of occasions when it has been necessary to subpoena witnesses on the appeal of an injured workman, the Appeal Tribunal has refused to issue the necessary subpoenas

at the request of counsel for the appellant. Again, this has imposed an undue hardship in the presentation of the appellant's case. We recommend that this practice be terminated.

E. SAFETY AND ACCIDENT PREVENTION

(1) Centralization of Safety Inspection and Regulations

It has been our experience that there are a number of enforcement agencies often working at cross purposes in the safety inspection field. For example, the Workmen's Compensation Board engages inspectors to check first aid facilities and equipment, while the Safety Inspection Branch of the Department of Labour sends out inspectors to ensure compliance with the Construction Safety Act and other statutory regulations. Municipalities sometimes employ inspectors for purposes of checking safety on construction sites within its jurisdiction, and employers themselves often have inspectors for various purposes. Interwoven with the activities of all these agencies are the various Accident Prevention Associations that are financed to a large extent by the Workmen's Compensation Board.

The total effort of all these agencies has not always been the most efficient and economical in terms of effective accident prevention in Ontario. In some areas there

has been a wasteful duplication of inspection while in others, there has been a shocking absence of inspection or regulation of any sort. Particularly with the municipal system of inspection, the present procedure of discovering and reviewing infractions, issuing and enforcing orders, and prosecuting or enjoining violations is entirely too cumbersome and slow to ensure reasonable protection for all those actively engaged on the construction site. For example, the Township of Scarborough in November of 1965, outlined various procedures to be followed regarding construction safety inspection, which are illustrative of these difficulties. There, the safety inspector may stop the work unless the infraction is of a minor nature. The infractions observed are recorded and a detailed order is issued to comply with provisions of the Construction Safety Act. Then the inspector is to discuss the order with the person receiving it, and is to allow "alternative procedures" if the Act is still complied with; otherwise the order is to be issued stopping the work in the unsafe portions of the project. Non-compliance with the order results in the issuing of a new order, and the matter being brought to the attention of the Supervisor of Building Inspection, who reviews the problem and attempts to contact the job superintendent to determine the reason for non-compliance. If the job superintendent agrees to co-operate, the summons is withheld for a

stated time; if the job superintendent has objections, a further investigation takes place and if the objections are valid, the Supervisor is to discuss the matter with the Director of Building Regulations before determining further action. If the objections are groundless, or if there is no co-operation, a summons is recommended, and the matter drawn to the attention of the Director of Buildings Regulations for further action. If there is still no co-operation, a representative of the Director goes to the Legal Department of the municipality to recommend issuance of the summons. If the Legal Department decides to issue same, the offender then is required to appear in Magistrates' Court for disposal of the charge. Throughout this prolonged process, unsafe working conditions often can go unrectified, and men's lives and health thus continually endangered.

Another aspect of the municipal inspection system which is open to question are the qualifications demanded of safety inspectors who are being hired. For example, the Building Inspection Department of the City of Toronto has stated on occasion that the only qualification for a safety inspector in its employ is a working knowledge of the Construction Safety Act and the Trench Excavators' Protection Act. Starting salary in such a position is \$112.00 per week, and we have been led to believe that the Department has experienced considerable difficulty in finding men to fill

its positions.

What is needed to remedy these various problems is a single, centralized, co-ordinating agency to marshal the concerted efforts and resources of employers, workmen and government towards an all-encompassing safety inspection and regulation program. It is our submission that the Workmen's Compensation Board, as the agency providing compensation to industrial accident victims, is the most logical choice as the agency to supervise a revamped system of inspection and regulation in the field of industrial accident prevention. Specifically, we would recommend that a separate panel of three members be constituted to deal solely with all matters of accident prevention, including the supervision and control of the inspection system. Ideally, one member of the panel might be appointed from management, one from labour, and the third might be a neutral person well-versed in all aspects of industrial accident prevention. In addition to the supervisory duties and powers over the inspection system, the panel might also act as a supervisory authority over the Accident Prevention Associations and could provide centralized research facilities in the field of accident prevention.

The members of our union however, are most gravely concerned about safety inspection. We firmly believe that a special panel of the Workmen's Compensation Board could

provide the kind of centralized supervision necessary for an inspection program that would substantially reduce industrial accidents. In this regard, we would urge that such a centralized authority adopt the following principles and guidelines:

(a) The supervisory authority should have a centralized administrative office from which all inspectors throughout the Province would be controlled, including municipal inspectors.

(b) The authority must have the power to determine the number of safety inspectors to be hired in each area of the Province, and to supervise their activities.

(c) The authority must insist upon certain minimum qualifications with regard to safety training for all inspectors. Also, the authority must set up certain rates of pay according to qualifications and responsibility, and must provide that the position of safety inspector be held only by full-time personnel. It is essential that the position of safety inspector become a recognized profession with high standards and sufficient remuneration to attract capable men.

(d) Trench, tunnel and safety inspection should be embodied in the same position, and should fall under the supervision of the centralized authority.

(e) The following procedure for issuing and enforcing inspectors' orders should be adopted:

- (i) An inspector is to have the authority to issue orders to comply and/or stop work immediately upon discovering a safety breach. It is within the discretion of the inspector whether time will be given for compliance prior to the issuance of a stop work order, but if the safety breach is the least bit hazardous and dangerous to workmen, the stop work order must be issued immediately.
- (ii) The inspector must file any stop work orders with the Supreme Court of Ontario, and any party found at a subsequent time to be in breach thereof will be held in contempt of Court, unless in the interim the order is rescinded in the manner hereinafter set forth.
- (iii) An inspector is to have the authority to rescind his stop work order if there has been, in his opinion, substantial compliance with the original order to comply, and the safety breach has been rectified.

(iv) If the inspector refuses to rescind his stop work order, any party may appeal to the central authority (i.e. the special panel of the Workmen's Compensation Board) requesting the rescinding of the stop work order. The onus shall lie on the applicant of proving to the satisfaction of the panel that the safety breach has been rectified and that any hazard or danger to workmen has been removed.

(v) An inspector is to enforce all orders to comply not accompanied by stop work orders, by laying an information before a Justice of the Peace for a breach of any Act for which offences are provided.

(f) The central authority should sponsor a monthly publication or bulletin, available to the public, reporting all inspectors' orders to comply or stop work (including the nature of the operations affected by such orders), convictions and fines registered, and appeals heard.

(g) The central authority must exercise all powers to ensure absolute compliance with any statutory or regulatory requirement that the name and telephone number of an appropriate inspector be placed prominently on the job.

(2) Incentive Payment Plan

The Workmen's Compensation Act in Section 86(6) provides for a merit system whereby the Board may reduce the amount of any contribution to the Accident Fund for which an employer is liable if such employer is taking accident prevention precautions and has a good accident record. Similarly, Section 99(3) provides for the adoption of a system of merit rating. However, we would submit that the present use of such systems provides insufficient incentive for employers to spend the necessary funds for safer working conditions. The biggest difficulty with the present system is that it is not compulsory, and is left to the discretion of the Board. A good accident record in one year is no guarantee that an employer's contribution to the Accident Fund will be reduced in the next year.

We would recommend that serious consideration be given to adopting an incentive payment plan whereby an employer's contribution would be automatically reduced if a favourable accident record were established in the preceding year. In this regard, the Commission might well decide to recommend a further inquiry in which other jurisdictions might be studied and more detailed briefs entertained.

(3) Television Advertisements

The Workmen's Compensation Board pays out about 3 per cent of its annual assessment to Accident Prevention Associations for the promotion of various safety measures. A great portion of these funds are used in costly television advertisements. We are of the firm opinion that the impact of these advertisements does not always justify the expense involved, and that the funds might be more wisely spent in "on the job" safety lectures, visual aids, safety equipment and rigorous inspections, when the minds of the employees and employers are geared to the actual work being undertaken.

(4) Safety - The Legal Responsibility of the Employer

Unlike many of our brothers in the labour movement, it is our contention that the employer is solely responsible in law for safety measures on the job. We do not deny that labour should participate on voluntary safety committees, or through representation on the Workmen's Compensation Board, or in implementing certain measures suggested or imposed by Government. Further, it is our hope that labour will co-operate with any attempts to reduce the number of industrial accidents through stricter inspection or otherwise.

However, in all cases it is the employer, not the employee, who has the ultimate control of each industrial

site or activity. It is the employer who hires and fires, estimates the costs, makes the decisions to build or tear down or use one method of construction as opposed to another, etc. Therefore, the employer should bear the ultimate responsibility for providing or imposing safety measures, and the costs can be figured by him as a part of the contract price. When safety decisions are made, labour is too often rendered helpless by the overriding considerations in the hands of management to effectively share the responsibility for such decisions.

F. SCOPE OF THE WORKMEN'S COMPENSATION ACT

(1) Casual Workers

Workmen presently employed as casual labourers are excluded from the provisions of Part 1 of the Act by virtue of Section 3(4). It is our opinion that such an exclusion is unfair in that it places an undue financial burden upon a workman thus employed by forcing him to seek redress in the Courts for injuries suffered in the course of his employment. Further, it is often these employees, many of whom are lacking in any particular skill, who are least able to bear such a burden. We therefore recommend that this exclusion be removed from the Act.

(2) Periodic Inquiry

The nature of any workmen's compensation legislation in an expanding economy like that of Ontario demands a periodic review to update and revise compensation schedules, standards of entitlement, appeal procedure, industrial classifications and the like. In order to prevent our Act, Regulations and Procedure from falling behind the industrial expansion forecast for the future of this Province, we recommend as part of the Act, that a Commission of Inquiry be appointed every three years to carry out this task of review and suggested revision. It would thus be our hope that in so doing, Ontario might remain in the forefront in this most important field of social legislation.

C O N C L U S I O N

It has been our purpose in this Brief to put before the Commission some of the most burning issues which have confronted our members in the various phases of the heavy construction industry. If we have raised any issues which might generate future legislative action through the Commission's report and recommendation, then we will have succeeded in our task.

We wish to express our gratitude for the opportunity of presenting this Brief to the Commission.

All of which is respectfully submitted.

LABOURERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 183.

Per: _____
Michael J. Reilly - President

Per: _____
Gerald Gallagher - Secretary-
Treasurer

Per: _____
Norbert J. Pike - Safety
Inspector

September 9, 1966.

APPENDIX : SUMMARY OF RECOMMENDATIONS

1. More comprehensive medical examinations for men working in compressed air, before, during and after such work.
2. More information and stricter inspection regarding the use of decompression chambers.
3. Arthritis and rheumatism to be recognized as industrial diseases.
4. Removal of residence restrictions in Section 116 (8) of the Act.
5. Elimination of short-term disability exemption and waiting period.
6. Computation of disability payments based on 100% of average take-home pay with minimum amounts to conform to legal minimum wage rate.
7. Elimination of "light duty" categorization unless light duty work is actually available.
8. Compensation for injuries aggravated by preexisting conditions.
9. No termination while on compensation unless employer's situation has changed.
10. Burial expense to be increased to \$750.00 plus \$150.00 for cemetery plot and services.
11. Lump sum payment to be increased to \$1,000.00 in fatal accident cases.

12. Computation of survivor benefits based on 100% of deceased workman's average monthly earnings at time of death.
13. Careful scrutiny by the Board of accident reports completed by the employer and of evidence collected by investigating representatives of the Board.
14. Letters from the Board advising of right to appeal to the Appeal Tribunal, to be written in the native language of the recipient, where possible, and to advise appellant of his right to retain counsel.
15. Board not to shield from the appellant evidence in its files, in cases before the Appeal Tribunal.
16. Appeal Tribunal to issue subpoenas at the request of the appellant.
17. Creation of a separate panel of the Workmen's Compensation Board to act as a centralized supervisory authority over all matters of industrial safety and accident prevention throughout the Province.
18. A complete reorganization of the safety inspection system in Ontario whereby the new supervisory panel of the Workmen's Compensation Board will impose standardized procedures, orders, personnel qualifications, etc. in all municipalities throughout the Province.
19. Adoption of a compulsory incentive payment plan for contributing employers.

20. Wiser use of funds by Accident Prevention Associations so as to provide more "on-the-job" communication with employees and employers.
21. Safety to be the legal responsibility of the employer.
22. Removal of the "casual workers" exclusion from Section 3 (4) of the Act.
23. Periodic review of Workmen's Compensation legislation every three years.

